

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX**

WITCO CORPORATION

Employer

and

Case 6-RC-11708

UNITED FOOD AND COMMERCIAL WORKERS
INTERNATIONAL UNION AND ITS
INTERNATIONAL CHEMICAL WORKERS UNION
COUNCIL, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before JoAnn F. Dempler, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.¹

Upon the entire record² in this case, the Regional Director finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

¹ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by August 12, 1999.

² The Employer filed a timely brief in this matter which has been duly considered by the undersigned.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(l) and Section 2(6) and (7) of the Act.

The Petitioner seeks to represent in a single unit all analytical laboratory technicians employed by the Employer at its Friendly, West Virginia facility, excluding all other employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

At the hearing in this matter, the Employer failed to take a position as to the appropriateness of the petitioned-for unit. In its post-hearing brief, the Employer contends, contrary to the Petitioner, that the petitioned-for unit is inappropriate for collective-bargaining purposes because significant differences exist among the analytical lab technicians in their terms and conditions of employment, precluding a determination that they, as a group, share a community of interest.³

There are approximately 26 employees in the petitioned-for unit. There is no dispute as to the eligibility of any of the employees in the petitioned-for unit. The Petitioner indicated a willingness to proceed to an election in any unit found appropriate herein. There is no history of collective-bargaining for any of the employees involved herein.⁴

The Employer, a Delaware corporation, is engaged in the manufacture and wholesale distribution of chemical products. Solely involved herein is its facility at Friendly, West Virginia. The facility is located near the Ohio River on a campus of approximately 1300 acres. The

³ The parties are in agreement that the Research and Development (R&D) technicians should be excluded from any unit found appropriate herein.

⁴ The Petitioner currently represents the Employer's approximately 280 to 288 production and maintenance employees at its Friendly, West Virginia facility and has represented those employees for over 30 years. The current collective-bargaining agreement for the production and maintenance employees will expire in July, 2000. Neither party contends that the petitioned-for employees should be included in any broader unit.

physical plant is located on about 50 of those acres, and is comprised of more than 25 separate buildings.

The facility is under the overall supervision of Fred Dailey, the Plant Manager. With respect to the production and maintenance employees, there are four Production Team Leaders and one Maintenance Team Leader reporting to Dailey. With respect to the analytical laboratory technicians (lab techs), there is one Laboratory Department Head, Dave Mullins, who reports directly to Dailey. Reporting to Mullins are John Poling, Mark Wilcox, Frank Swisher and Michael Lockney, who are supervisors of the various labs.⁵

As previously noted, the Employer contends, contrary to the Petitioner, that the petitioned-for unit is inappropriate inasmuch as the analytical lab techs lack a sufficient community of interest among themselves due to differences in their supervision, job classifications, working conditions, wages and benefit programs.

All analytical lab techs work in the laboratory department on the first floor of a one hundred yard long, two story building called Building One. Their primary function is to perform laboratory tests to verify the quality of the chemicals produced at the facility. Thus, they measure, inter alia, the thickness of the product, impurities within the product, and the clarity of color of the product. In performing their tests, lab techs use infrared analyzers, gas chromatographs, spectrometers, and other sophisticated laboratory equipment. They then prepare reports on the analyses which are entered into a computer. In performing their work, the lab techs receive the samples to be tested from production and maintenance employees who bring the samples to Building One.

All analytical lab techs work on either a rotating shift or a day shift. There are four rotating shifts in the department with four employees on each of those shifts. There are four

⁵ At hearing, the parties stipulated and I find, that the following employees are supervisors within the meaning of Section 2(11) of the Act in that they possess one or more of the statutory indicia of supervisory status and, therefore, they are excluded from the unit found appropriate herein: Plant Manager Fred Dailey, the production team leaders, the maintenance team leader, Laboratory Department Head Dave Mullins, and Supervisors John Poling, Mark Wilcox, Frank Swisher and Michael Lockney.

classifications of analytical lab techs: lab technician, senior lab technician, advanced lab technician and master technician. Progression through these classifications is based on performance, knowledge, performance ratings and length of service. While the Employer prefers to hire lab techs who have prior laboratory experience and/or a biology or chemistry educational background, a formal Bachelor's or Associate's degree is not required, and equivalent experience is permitted. Once hired, there is a certain amount of on the job training with respect to the particular nature of the work performed in the facility.

When positions as analytical lab techs become available, applicants are first sought from within the analytical laboratory department, and then the jobs are posted and bid throughout the facility, and sometimes advertised outside of the facility. The record reveals that in the past five years, no one from the production and maintenance department has bid into a lab tech position.

Lab techs receive the same benefits as all other non-represented employees. In this respect, the record reflects that lab techs hired prior to June 1, 1996, have a slightly better pension and 401(k) benefit plan than those hired after that date, due to a change in ownership of the Employer and "grandfathering" of those employees in that respect. With respect to wages, the record reveals that the Employer utilizes "wage bands". The analytical lab techs receive between \$18,000 per year at the lowest end of the low band, and up to \$50,000 per year at the highest end of the high band. The current employees' wages reveal "bumps" in the bands for those who have worked five years or less and for those who have worked ten or more years. Increases in wages are based on annual evaluations by the above-named laboratory department supervisors, with the involvement of Laboratory Department Head Mullins.

Vacations taken by analytical lab techs are handled internally within the laboratory department, which may require overtime work by other employees within the department. Employees from other departments are not utilized to temporarily replace analytical lab techs during vacation periods.

It is well established that the petitioned-for unit need only be an appropriate unit for collective bargaining, not the most appropriate unit. Omni International Hotel, 283 NLRB 475

(1987). In deciding the appropriate unit, the Board first considers the Union's petition and whether that unit is appropriate. The unit need not be the most appropriate or the only appropriate unit. Overnite Transportation Company, 322 NLRB 723 (1996).

As noted previously, the Employer contends that the petitioned-for unit is inappropriate due to asserted differences among the analytical lab techs including their supervision, job classifications, working conditions, wages and benefits.

As discussed above, the record reveals that the analytical lab techs all work in a single Laboratory Department and report to laboratory department supervisors who all ultimately report to Laboratory Department Head Mullins. The department's job classifications represent progression through the department based upon experience and tenure within the department while the various shifts serve to insure that all of the department's functions are adequately staffed. With respect to wages and benefits, the record reflects increases in wages based on departmental evaluations and length of tenure, while differences in benefits reflect changes in corporate ownership rather than any substantive distinction between employees.

Thus, the record establishes that the analytical laboratory technicians work in the same department on the same floor of a single building, perform essentially the same job functions, and have the same educational requirements. They report in their own supervisory chain to the Plant Manager; are hired, receive wage increases, and advance within their department based on evaluations conducted by their own department supervisors. They receive, except as noted above, the same benefits. The record reflects as well that there is almost no communication between the analytical lab techs and other employees at the facility, that the lab techs work on their own floor in a separate building on a 50-acre campus, and that the Union seeks to represent them in a separate unit. Based on the above, and the record as a whole, I find that the petitioned-for unit of analytical laboratory technicians share a sufficient community of interest to constitute an appropriate unit.

Accordingly, I find the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time analytical laboratory technicians employed by the Employer at its Friendly, West Virginia facility; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act, and all other employees.

DIRECTION OF ELECTION

An election by secret ballot will be conducted by the undersigned Regional Director among the employees in the unit set forth above at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.⁶ Eligible to vote are those employees in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.⁷ Those eligible shall vote whether

⁶ Pursuant to Section 103.20 of the Board's Rules and Regulations, official Notices of Election shall be posted by the Employer in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. As soon as the election arrangements are finalized, the Employer will be informed when the Notices must be posted in order to comply with the posting requirement. Failure to post the Election Notices as required shall be grounds for setting aside the election whenever proper and timely objections are filed.

⁷ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc. 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that the election eligibility list, containing the full names and addresses of all eligible voters, must be filed

or not they desire to be represented for collective bargaining by United Food and Commercial Workers International Union and its International Chemical Workers Union Council, AFL-CIO.

Dated at Pittsburgh, Pennsylvania, this 29th day of July 1999.

/s/Gerald Kobell

Gerald Kobell
Regional Director, Region Six

NATIONAL LABOR RELATIONS BOARD
Room 1501, 1000 Liberty Avenue
Pittsburgh, PA 15222

440-1740-5001

by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, Room 1501, 1000 Liberty Avenue, Pittsburgh, PA 15222, on or before August 5, 1999. No extension of time to file this list may be granted, except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.